

Approved 7/2/08

**TOWN OF CUSHING
PLANNING BOARD
Minutes of Meeting
May 7, 2008**

Board Present: David Cobey, Bob Ellis, Evelyn Kalloch, Frank Muddle, CEO Scott Bickford and Recording Secretary Crystal Robinson

Absent: Chairman Dan Remian

1.Call to Order: Vice-Chairman Muddle called the meeting to order at 6:02 P.M.

2.Approve the Minutes of 4/2/08:

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, to accept the minutes of the 4/2/08 meeting.
Carried 4-0-0

3. Correspondence and Communications: Mr. Muddle read aloud a letter (dated 5/5/08) from the DEP to James Tower, regarding storm water management for the Robbins Mountain Subdivision [RMS]. He noted that the Board had reviewed a 3/20/08 letter from the DEP to Mr. Tower at the last meeting. There was also a letter regarding Bonnie Miller's warranty deed, as related to RMS, which Mr. Muddle read aloud. The vice-chairman said he could not tell if the survey lines conflicted.

4. Application for Lot Line Change for Property of Richard and Julia Palm, Presented by James Tower, Map 6, Lot 9-19 (Lot Line at 9-18 / 9-19): Mr. Palm said the street end of the line had been moved 12' to the south on 1/25/07 and they wanted that change approved by the PB. Mr. Ellis said he saw no application and Mrs. Kalloch said the map presented was the only information the PB had. Mr. Muddle asked if this were an update to the plan dated 11/ 21/07. Mr. Palm confirmed this, saying the 12/5/07 plan depicted the change he was requesting. Mr. Ellis asked if this was from a previous request for a line change. Mr. Palm said it was, but there had been an error on the previous request. He said that he and Mr. Tower both agreed that this change needed to be made, adding that Mr. Tower had also corrected the position of the utility box.

Mr. Palm said both he and the developer had made a mistake on the original agreement. CEO Bickford said he had met with Mr. Palm and Mr. Tower and recognized that this change was to correct an error that had been made. They did pay the PB fee, he said. Mrs. Kalloch reported that the acreage would change to 2.36 from 2.30. Mr. Tower confirmed for Mr. Cobey that he owned Lot 3. Mr. Ellis stated that the boundary change would be between Lot 3 and Lot 4 only, affecting only one line and Mrs. Kalloch said that was correct.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, to accept the application to change the lot line between Lots 3 and 4 and accept this revised plan for only that one change.
Carried 4-0-0

Mr. Bickford said the Board should make the change on the plan before signing. The Mylar was unavailable and Mr. Muddle said the Mylar should indicate that approval was for the line change only. Mr. Muddle said it could be signed later in the office but the CEO said the Board had been cautioned about signing that way. Mr. Muddle said the Board could consider signing at a work session a week from Thursday, though the condition about the line needed to be included before then.

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that a note reading "This approval is for a property line change between Lots 3 and 4 that creates a line 309.79' long." be placed on the Mylar.

Mr. Palm said he would get the Mylar signed in the next two days. Mr. Bickford said the PB would need copies with the same language and a surveyor's stamp.

5. Continuation of Robbins Mountain Subdivision, Presented by James Tower, Map 5, Lots 83 and 84: Mr.

Tower's attorney, Edmond Bearor, said he had attended the March PB meeting to try to bring closure to the remaining outstanding issues of this application. Since then, Mr. Tower had amended the plan to pull lots from the disputed line with Mr. Cardon, though he did not make any claim as to that dispute. With respect to the letter the Board received from counsel at Perkins & Thompson regarding the boundary line issue, Mr. Bearor said that land was shown as retained land and was not a lot in the subdivision. Mrs. Kalloch said Mr. Tower had previously removed the retained land from the plan so he could apply for a land use permit and it should not appear on it now. The attorney responded that perhaps it could be removed from the plan entirely, but both the developer and his surveyor believed he owned that land.

Mr. Ellis asked if moving the north boundary away from the contested line took into consideration the dispute over the angle of that line. He said it amplified from east to west, though the shapes of the lots appeared to be pretty close to what they were before. Mr. Tower said the shapes would be very similar because the contested lines were parallel. He said no portion of this subdivision fell on disputed land. Mr. Ellis repeated that he recalled that the angle was disputed. Mr. Tower responded that a surveyor on whom he had relied on many times had provided the northern boundary.

Mr. Bearor said the development had been pulled back from the disputed area. He explained that the line shown was the boundary of the subdivision, though not an existing boundary line. It had been drawn so as to remove the issue from the PB's purview. The question of legal right, he said, was satisfied by the presentation of deeds, maps, etc. The attorney said that any problem with the neighbor was a civil matter and he suspected a law court would agree that the PB was not a proper forum to determine a boundary line. He continued that the most intrusive aspect of the development was the road and Mr. Tower had relocated it. Mr. Bearor stated that the applicant had deeds, affidavits and records in the Registry of Deeds that supported his position. Mr. Muddle said the PB's counsel had said this was not an area the Board needed to resolve; as long as the development was not in a disputed area, it could be approved. He said the unresolved issue was whether or not this area was part of the subdivision.

Mrs. Kalloch said the line change in question had dramatically altered the acreage of several lots along that line. She asked why Lots 11, 12, and 13 had also changed and said this looked like an amended plan. Mr. Muddle acknowledged that he had also noticed that Lots 3, 6, 9, 11, 12, 13, had amended acreage. Mr. Tower stated that this drawing represented his final drawing for the RMS. He had tried to satisfy the requirements countless times and when changes were made to the lines the boundary lines also necessarily needed to be changed. He said there was only one drawing ever presented to the PB, which included the disputed land; he had taken a step back and removed the disputed land from that plan. Mrs. Kalloch asked why Lots 11, 12, 13 would be affected by it, as the boundary lines appeared to be the same. Mr. Tower said they were similar but not identical.

Mr. Muddle asked if this had anything to do with the 3/20/08 letter from the DEP regarding buffers. Mr. Tower said that had to do with the _____ plan, which he would be happy to show the PB, though there was no correlation. He said this project had gone on so long that the DEP didn't even remember what it had received. CEO Bickford interjected that he was confused because this appeared to be another substantial review. Mr. Muddle said the Board was into the area of reconsideration and there were three areas of concern spelled out in the March minutes. These were the disputed line, soil run off and confirmation of financial resources. The motion passed said the Board would reconsider its denial of this application at its May meeting, at which time Mr. Tower's counsel assured them they would have answers sufficient to resolve those three issues. Mr. Muddle said the DEP letter made it clear that this was not so; neither had further financial information been received. Mr. Bearor said he was still attempting to get the DEP's final approval and had already responded to the May 5th letter. Mr. Tower added that he had received a faxed letter from the DEP today and he was fairly comfortable that the DEP permit was forthcoming. He said the DEP was going over this application scrupulously because it wanted to make certain there was no reasonable opportunity for Mrs. Miller to appeal, since the state would incur the expense if she did.

Mr. Ellis asked if the DEP had the same updated drawing the Board was considering and Mr. Tower said they did, but all of their focus was on storm water impacts from the parking area and the path on the retained land. He said he had designed a bio-filtration system for the parking area and added some buffers to some lots within the subdivision so that all of the thresholds for storm water were exceeded. Mr. Bearor said things were further along than they were in March. He urged the Board to do one of two things: wait for the DEP approval or condition its approval on the receipt of it.

Mr. Muddle stated that the Board had nothing additional on the financial issue. Mr. Bearor said Mr. Tower's financial position had not changed substantially since the Machias Savings Bank's letter received last August. He said the

auction was not a distressed sale and had been undertaken upon the request of the bank. The attorney said he had asked his client to provide a copy of a signed, sworn statement of his financial position. The cost of the project was \$125,000 to complete the improvements on this plan and the statement claimed he has ready resources to cover that. Mrs. Kalloch said she had heard a higher figure mentioned, but the whole plan had changed substantially with adding the shore lot and it looked to her as though it would need a complete review again.

Mr. Ellis asked if the lot owners would use the retained land. Mr. Tower replied that the Board should consider what was in front of it as a subdivision and could not make a judgment as to his intentions. He said there was a pending application in front of the Appeals Board and the area of wetland was less than 10 contiguous acres. Mr. Ellis said the Board at least needed to reconsider the lot requirements for this submission because the square footage had changed and the PB needed to make sure the lot requirements were met.

Mr. Cobey said the Board's concern was that the letter from Machias Savings Bank was a generic e-mail, neither specific to this project nor current. A guarantee from the bank that applied to this particular project was needed. Mr. Bearor said he had not understood from the March meeting that there was concern about this. Mr. Ellis stated that the PB did not make a motion as to exactly what it wanted because it had been voted on previously. Mrs. Kalloch stated that the Board had made repeated requests for a financial statement. Mr. Ellis said the Board should make a specific request if financial information was to be a requirement. Mr. Muddle said that because the financial statement was approaching a year old, the Board wanted some confirmation of that information. Mr. Cobey said he would like to see that information on bank letterhead. At Mr. Muddle's suggestion, Mr. Ellis read from the March minutes regarding the financial disclosure discussion. Mr. Tower noted that the submission was faxed on bank letterhead. Mr. Ellis read, "The CEO asked if we had a figure for the construction cost. \$125,000 . . . PB wants the applicant to refresh the 2-year old figure."

Mr. Bearor said if you want to see a financial statement that's fine, but the concern is that you not be left with half-built developments. He said Mr. Tower would accept a condition on the approval that no lot would be sold until all of the improvements were in place. Mr. Muddle said that would take the issue off the table, Mr. Ellis said he would agree to that condition and Mr. Cobey said that would answer his concerns. Mr. Muddle said the other two issues were the boundary, which was rendered outside the PB's concern with the relocated line, and the DEP approval. Mrs. Kalloch said this was not the same application as it had completely changed.

Mr. Ellis said he'd like to make a motion on the financial capacity if the Board was ready. Mr. Muddle said the Board was really making a decision not to approve the project. Mr. Cobey stated that the PB did not have all the things asked for on the table and said he was not sure it was appropriate to pick them off one by one. Mr. Ellis responded that a thread of common sense had been established, but Mr. Cobey said this had been a long process and he'd like to do it with a full Board present. Mr. Muddle turned the discussion to the DEP, saying the PB had asked for a letter from the DEP regarding its approval of the storm water issue. He asked how the Board felt about putting the application off until that letter was received. Mr. Cobey said that had been the plan and Mr. Ellis said the Board's counsel had recommended that course of action. Mr. Bearor agreed that would make the most sense because he would prefer not to have a conditional approval. Mr. Cobey said he wanted to approve the plan with the correct reference when the DEP approval was available. Mr. Bearor said he would advise the Board when the DEP approval had been received, at which time Mr. Ellis said Mr. Tower could ask to be on the next agenda. Mr. Tower said this had been going on for two years and he would like to shoot for next month. Mr. Cobey said he had discussed this with Chairman Remian, who quoted Debbie Maddox as saying the approval could be six weeks away; Mr. Cobey suggested waiting. Mr. Muddle said he had offered to have a special meeting if the letter were received. The Board agreed to put this on the next agenda if the letter came in two weeks; otherwise a special meeting would be called.

Mr. Bickford asked if he could assume that the DEP had the exact plan the PB had. Mr. Tower said they had that and more. The CEO asked if the Board could have the additional materials, but Mr. Muddle said the PB had told Mr. Tower they did not want them. Mr. Tower said he would record the drawing approved by the town and the DEP; anyone who purchased a lot would have to comply with both. Mr. Muddle said the Board agreed to postpone the decision as far as the DEP letter was concerned. Mrs. Kalloch thought the PB should go over the entire plan because it was completely different. Mr. Ellis responded that her concerns could be taken care of in the review of lot requirements. Mrs. Kalloch agreed, as long as it conformed to the Subdivision Regulations for that period.

Mr. Muddle said the Board would reconsider approval regarding financial ability and the boundary area, as well as any other requirements, once DEP approval was received. Mr. Ellis said he assumed the Board had the responsibility of reviewing the lot requirements.

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, to table the matter until we receive the order from the DEP.
Carried 4-0-0

Patrick Cardon spoke from the audience to say there were three different plans with discrepancies between them. He reminded the PB that his attorney's letter of 4/1/08 questioned the new evidence he submitted, which had been made part of the record. Mr. Muddle said the Board's only concern was whether or not the land was owned by the applicant. Mr. Ellis asked Mr. Bearor if he had any data to back up his claim that Mr. Tower owned the land. The attorney said he did and could provide it to the PB and Mr. Cardon. Bonnie Miller spoke from the audience to say she had not been notified that there were changes to the plan. She said the letter of 5/5/08 mentioned a storm water pond and wondered if that or the bio-filtration area would be located on the retained land. If it were, that would make it part of the RMS, she said. Mr. Cobey said the Board would have no information on that until the Board of Appeals completed its work. Mr. Tower conceded that the bio-filtration system would be on the retained land but said the DEP application was not the subject of tonight's meeting. Ms. Miller objected, saying that water that ran off the subdivision would run into the bio-filtration area. Mr. Muddle said that would not be known until the DEP approval was received.

Mr. Cobey mentioned a letter from MMA, provided by Mr. Bearor, which contained sample wording. He said he'd like to bring the Board's attention back to that because there were geometric conflicts in at least two of the property lines. Mr. Cobey said there was language that made it clear that the Board distanced itself from any partiality concerning the boundaries; he felt that language should be included in the motion.

6 Land Use Application for William and Christine Gray, Presented by Vision Builders, Map 6, Lot 22-10:

Greg Haining of Vision Builders represented the Grays' application for a carriage house barn and a new house. Mr. Muddle asked whether anyone had questions about the submitted material, noting that this fell under the Shoreland Zoning Ordinance dated November 2007.

ACTION: Mr. Ellis made a motion, seconded by Mr. Cobey, for a positive finding of fact on 15A on this plan.
Carried 4-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that section 15B is satisfied by the application.
Carried 4-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Muddle, that section 15C through 5 [sic] do not apply to this application.
Carried 4-0-0

In response to a question from Mrs. Kalloch, Mr. Haining said they were coming in from Gaunt Neck Rd. Mr. Cobey asked if sheet flow from the driveway went south off the driveway and Mr. Haining said water flowed to the lower side of the road, where three culverts were proposed. Mr. Ellis said the arrows on the drawing indicated the water would flow to the culverts. Mr. Muddle ascertained that the driveway would be 12' wide. Mr. Cobey asked if Vision planned to ditch the uphill side of the road and Mr. Haining replied that they would. Mr. Cobey asked if the culverts met the spacing requirements. Mr. Haining said an engineer had drawn up the plan and he was simply presenting it.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 15G.
Carried 4-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that 15H does not apply.
Carried 4-0-0

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 15I.
Carried 4-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that 15J be approved.
Carried 4-0-0

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, that 15K, L, M and N do not apply to this application.
Carried 4-0-0

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 15O.
Carried 4-0-0

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 15P.
Carried 4-0-0

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 15Q (Soils).
Carried 4-0-0

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 15R.
Carried 4-0-0

ACTION: Mr. Muddle made a motion, seconded by Mr. Cobey, that 15S does not apply.
Carried 4-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Muddle, that 15T does not apply.
Carried 4-0-0

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, for a positive finding of the following: that it will not have an adverse effect on the items in Section 16E (a – i) of the Shoreland Zoning Ordinance.
Carried 4-0-0

ACTION: Mr. Ellis made a motion, seconded by Mr. Cobey, to approve the application.
Carried 4-0-0

8. Adjournment:

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, to adjourn at 8:12 P.M.
Carried 4-0-0

Respectfully submitted,

Deborah E. Sealey
Recording Secretary